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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 000228

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E.O. 12958: DECL: 02/11/2020

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SUBJECT: TYMOSHENKO READIES COURT CHALLENGES; REGIONS  
NEGOTIATING TO OUST HER AS PM

Classified By: Ambassador John F. Tefft. Reasons 1.4 (b/d).

Summary

1. (C) PM Tymoshenko, thus far remaining uncharacteristically silent in public, is putting together legal challenges to the February 7 Presidential election result. DPM Nemyria admitted that he did not think the challenges would change the outcome. The Yanukovych camp is negotiating with elements from Tymoshenko's main coalition partner to bring down her government. Regions would be prepared to concede the Prime Ministership to close the deal. Regions expects the Central Election Commission to certify the results of the election on February 13. End Summary.

Tymoshenko Preparing Court Challenges

2. (U) With one hundred percent of the votes reported, Party of Regions leader Viktor Yanukovych has a 3.48% margin over PM Tymoshenko (48.95% Yanukovych, 45.47% Tymoshenko). The gap represents about 888,000 votes out of twenty five million cast.

3. (C) Deputy Prime Minister Grigoriy Nemyria confirmed to the Ambassador February 9 that PM Tymoshenko's team was putting together legal challenges to the conduct of the February 7 Presidential election runoff. There had been falsifications, Nemyria maintained, and it was important to put them on legal record. That had not happened after the 2004 fraud. However, Nemyria said he did not think that the challenges had the prospect of overturning the final result. He stressed that everything the Tymoshenko campaign was doing to register its allegations was consistent with Ukrainian law. Tymoshenko Bloc MPs have since announced that the party would file the court challenges after final certification of the election results by the Central Election Commission (CEC), which must take place by February 17.

Regions on Tymoshenko's "Dirty Game"

4. (C) Ambassador spoke February 10 with Serhiy Lyovochkin, Yanukovych's Chief of Staff. Lyovochkin underlined that, as of February 10, one hundred percent of Ukraine's precincts had reported in electronically to the Central Election Commission. Ukraine's 225 District Election commissions (DECs) were in the process of sending the signed physical "protocols" with official tallies to the Central Election Commission, as required. Lyovochkin expected the CEC to announce its certification of the final result on February 13, following receipt and registration of all of the protocols.

5. (C) Lyovochkin welcomed that international observers had unanimously recognized the election as free and fair. The slowness of the counting was due solely to delays by the Tymoshenko team. She was playing a "dirty game," trying to

slow things down. Tymoshenko, he said, is damaging herself with the Ukrainian people by the way she was throwing every roadblock in the way of finalizing the election. Lyovochkin hoped that now that the electronic count was complete, congratulatory calls would come in.

#### Negotiations on a New Coalition

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¶6. (C) Lyovochkin affirmed the desire of the Party of Regions to force creation of a new coalition and to remove Tymoshenko as PM. Negotiations were underway with members of the Tymoshenko Bloc's main coalition partner, Our Ukraine-People's Self Defense (OU-PSD). Lyovochkin thought that formation of the new coalition might begin the following week. To get a majority of OU-PSD members to agree, Regions was prepared to deal. Yanukovych preferred Regions stalwart Mykola Azarov as PM. However, (former Presidential candidate) Arseniy Yatsenyuk would also be acceptable to close the deal with OU-PSD. Yanukovych "could live with either one."

#### Analyst: New Coalition No Done Deal

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¶7. (C) Volodymyr Fesenko, noted political analyst and commentator, offered us his take on events. Tymoshenko, he believes, does not expect to reverse the election result but is trying to use the specter of court challenges to extract concessions. She is improvising now, without a clear plan, which is why she has been so silent. She may also be seeking to negotiate an exit strategy with Regions whereby they would

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offer her guarantees not to prosecute her or go after her sponsors.

¶8. (C) Fesenko thought a Regions-OU-PSD coalition possible but far from a done deal. Tymoshenko's stronger than expected showing February 7 had undermined Regions' negotiating position. There will be more reticence among some in OU-PSD to take the plunge, which, if it fails, could end their careers. Regions has the advantage, however, that many OU-PSD members, fearing poor results, do not want early parliamentary elections. Another impediment to a Regions-OU-PSD coalition is the complex mechanics of dealing with the unwieldy OU-PSD, which consists of ten or more sub-groups. You just can't talk to one leader and have a deal.

¶9. (C) Regions is ready to bargain, Fesenko said, and will be willing to offer a compromise candidate, more palatable to OU-PSD as PM. Fesenko thought Yuriy Yekhanurov, former PM and Defmin and Yushchenko loyalist, a possible compromise choice. He is an experienced administrator and, unlike Yatsenyuk, does not have presidential ambitions. Fesenko said that Serhiy Tihipko, third place finisher in round one of the presidential elections, could be another compromise choice. However, Tihipko's ambitions pose challenges for Yanukovych. For Foreign Minister, Fesenko thought current FM Poroshenko or current Ambassador to Russia Gryshchenko to be the front runners.

#### Comment

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¶10. (C) Tymoshenko's failure thus far to concede has not won her additional public support. There is no second Maidan in the offing. Her better than expected showing on February 7 will force Regions to offer more inducements to take down the current coalition. The key variable is whether Regions can persuade at least half of OU-PSD to jump ship. Regarding congratulatory messages, Lyovochkin would like them as soon as possible, but was calm.

TEFFT